if the change does not injure other appropriators; that these rules were but incidental to the doctrine of appropriation, prevailing in both States, upon which the decree had been based. The Court observed that it was not its purpose "to withdraw water claims dealt with therein from the operation of local laws relating to their transfer or to restrict their utilization in ways not affecting the rights of one State and her claimants as against the other State and her claimants". It was found that the diversions through the transmountain ditches had been made with the consent of the owners of the water rights and with the full sanction of Colorado, and hence the situation was not different from what it would have been if the owners of other claims had formally transferred parts of their water rights to the Skyline owners. The Court said: "But the Skyline owners are now permitted by the owners of the other claims and by Colorado to take and use part of the waters included in those claims. Wyoming and her claimants are in no way injured by this. No departure from the decree is involved. The thing which the decree recognizes and confirms is 'the right of the State of Colorado, *or of anyone recognized by her as duly entitled thereto,* . . . to divert and take' the water included in the designated appropriations". The Court concluded that in the circumstances shown the Skyline Ditch diversions did not constitute an infraction of the decree. *Id.*, pp. 584, 585.

It is plain that the principle of this ruling, as applied to the transmountain appropriations which diverted the water of the Laramie river to another watershed, would certainly also apply to the meadowland appropriations within the same watershed, where part of the water diverted may find its way back to the stream. The limitation of the meadowland appropriations to 4250 acre feet was to keep the diversions in Colorado within the amount allowed to that State, not to prevent the distribution of the water thus allowed, according to Colorado laws, where there was no infraction of the rights of Wyoming and her water claimants.

We conclude that the decree is not violated in any substantial sense so long as Colorado does not divert from the Laramie river and its tributaries more than 39,750 acre feet per annum.

In 1939, however, Colorado diverted more than that total amount. Apparently no question had been raised by Wyoming as to the diversions in 1937 and 1938. It is undisputed that when the diversions in 1939 reached 39,865.43 acre feet on June 19th, Colorado

closed the headgates of the various appropriations within that State. But Wyoming alleges that Colorado wrongfully permitted the headgates to be reopened on June 22d and to remain open until July 11th, thus permitting the diversion of 12,673 acre feet in excess of the aggregate amount allowed to Colorado, despite Wyoming's protest. That there was this excessive diversion is not controverted.

Colorado insists that Wyoming has not been injured. But such a defense is not admissible. After great consideration, this Court fixed the amount of water from the Laramie river and its tributaries to which Colorado was entitled. Colorado is bound by the decree not to permit a greater withdrawal and, if she does so, she violates the decree and is not entitled to raise any question as to injury to Wyoming when the latter insists upon her adjudicated rights. If nothing further were shown, it would be our duty to grant the petition of Wyoming and to adjudge Colorado in contempt for her violation of the decree.

But Colorado insists that the diversion of more than the allocated total during the season of 1939 was with Wyoming's acquiescence. That is the sole available defense. To support it, Colorado has presented affidavits showing communications between an association of meadowland appropriators and the special hydrographer of Wyoming and also stating that at a conference in the office of the Governor of Colorado on July 1, 1939, the officers of Wyoming said that they had no objection to continued diversions being made through the meadowland ditches for the reason that a great portion of the water so diverted returned to the Laramie river to be used downstream by Wyoming appropriators. Wyoming presents affidavits to the contrary, setting forth her demands. It is unnecessary to review in detail the points in controversy. In the light of all the circumstances, we think it sufficiently appears that there was a period of uncertainty and room for misunderstanding which may be considered in extenuation. In the future there will be no ground for any possible misapprehension based upon views of the effect of the meadowland diversions or otherwise with respect to the duty of Colorado to keep her total diversions from the Laramie river and its tributaries within the limit fixed by the decree.

For the reasons stated, the petition of Wyoming is denied, the costs to be equally divided.

It is so ordered.